

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
Ex parte Hlavka et al.
Appeal No. _____**

Serial No.: 10/622,207
Filed: July 18, 2003
Art Unit: 3774
Examiner: William H. Matthews
Inventor: Edwin J. Hlavka et al.
Title: METHOD AND APPARATUS FOR PERFORMING CATHETER-
BASED ANNULOPLASTY
Attorney Docket: MICO-06C
Confirmation No.: 4023

Cincinnati, Ohio 45202

January 29, 2009

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

In response to the Notification of Non-Compliant Appeal Brief mailed January 16, 2009, a Status of Claims in accordance with 37 C.F.R. §41.37(c)(1)(iii) is submitted herewith, as set forth MPEP §1205.3.

III. Status of Claims

Claims 1-59 and 68-70 are canceled. Claims 60-67 and 69 were pending in the Application after the final rejection dated September 2, 2008, and were rejected under 35 U.S.C. §112, first paragraph. Claim 69 was subsequently cancelled in an after-final amendment filed October 30, 2008. Claims 60-67 are subject to this appeal.

Conclusion

Appellants do not believe that any fee is due in connection with this submission. However, if any fees are necessary to complete this communication, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202
(513) 241-2324 (voice)
(513) 241-6234 (facsimile)

By: /David W. Dorton/
David W. Dorton, Reg. No. 51,625